



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

9                   LESLIE JOHNSON,

10                   Plaintiff,

11                   vs.

15                   SILVA, et al.,

16                   Defendants.

CASE NO. 09-CV-1568 BEN (POR)

ORDER:

**(1) ADOPTING REPORT  
AND RECOMMENDATION**

**(2) DENYING DEFENDANTS'  
MOTION TO STRIKE  
PORTIONS OF THE FIRST  
AMENDED COMPLAINT**

**(3) GRANTING IN PART  
AND DENYING IN PART  
DEFENDANTS' MOTION TO  
DISMISS THE FIRST  
AMENDED COMPLAINT**

[Docket Nos. 38, 50]

19                   Plaintiff Leslie Johnson, a state prisoner proceeding *pro se*, filed a First Amended Complaint  
20                   on December 1, 2010, pursuant to 42 U.S.C. § 1983. (Docket No. 34.) Defendants filed a Motion to  
21                   Dismiss the First Amended Complaint and/or Strike Portions Thereof on January 14, 2011. (Docket  
22                   No. 38.) Plaintiff filed an opposition (Docket No. 48), and Defendants filed a reply (Docket No. 49).

23                   Magistrate Judge Louisa S. Porter issued a thoughtful and thorough Report and  
24                   Recommendation recommending that (1) Defendants' Motion to Strike be denied, and (2)  
25                   Defendants' Motion to Dismiss be granted in part and denied in part. (Docket No. 50.) Any  
26                   objections to the Report and Recommendation were due August 5, 2011. None of the parties  
27                   filed any objections. For the reasons that follow, the Report and Recommendation is

28                   **ADOPTED.**

1 A district judge “may accept, reject, or modify the recommended disposition” of a  
 2 magistrate judge on a dispositive matter. FED. R. CIV. P. 72(b)(3); *see also* 28 U.S.C.  
 3 § 636(b)(1). “[T]he district judge must determine de novo any part of the [report and  
 4 recommendation] that has been properly objected to.” FED. R. CIV. P. 72(b)(3). However,  
 5 “[t]he statute makes it clear that the district judge must review the magistrate judge’s findings  
 6 and recommendations de novo *if objection is made*, but not otherwise.” *United States v.*  
 7 *Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (emphasis in original), *cert*  
 8 *denied*, 540 U.S. 900 (2003); *see also* *Wang v. Masaitis*, 416 F.3d 992, 1000 n.13 (9th Cir.  
 9 2005). “Neither the Constitution nor the statute requires a district judge to review, de novo,  
 10 findings and recommendations that the parties themselves accept as correct.” *Reyna-Tapia*,  
 11 328 F.3d at 1121. Accordingly, the Court may deny the Motion to Strike as well as grant in  
 12 part and deny in part the Motion to Dismiss on this basis alone.

13 In the absence of any objections, the Court fully **ADOPTS** Judge Porter’s Report and  
 14 Recommendation. Defendants’ Motion to Strike Plaintiff’s first, second, fourth, and sixth  
 15 causes of action is **DENIED**. Defendants’ Motion to Dismiss Plaintiff’s Eighth Amendment  
 16 claim of deliberate indifference to his medical needs is **GRANTED** with leave to amend  
 17 against Defendants Liptscher and Espinoza, and **DENIED** as to Defendants Akbari and Silva.  
 18 Defendants’ Motion to Dismiss Plaintiff’s conspiracy claim is **GRANTED** with leave to  
 19 amend. Defendants’ Motion to Dismiss Plaintiff’s breach of contract claim is **GRANTED**  
 20 with prejudice. Defendants’ Motion to Dismiss Plaintiff’s intentional infliction of emotional  
 21 distress claim is **GRANTED** with leave to amend. Defendants’ Motion to Dismiss Plaintiff’s  
 22 negligence claim is **DENIED**. Plaintiff is **GRANTED** forty-five (45) days from the date of this  
 23 Order to file a Second Amended Complaint.

24  
 25 **IT IS SO ORDERED.**

26  
 27 DATED: August 8, 2011



HON. ROGER T. BENITEZ  
 United States District Court Judge